

APPEAL NO. 170223
FILED MARCH 23, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). An expedited contested case hearing (CCH) was held on January 2, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 18th quarter, October 26, 2016, through January 24, 2017, because the appellant (self-insured) waived the right to contest the claimant's entitlement to SIBs for the 18th quarter and (2) the self-insured waived its right to contest SIBs eligibility for the 18th quarter under 28 TEX. ADMIN. CODE § 130.108(c) (Rule 130.108(c)).

The self-insured appealed, arguing that the claimant failed to demonstrate an active effort to obtain employment during the qualifying period for the 18th quarter; that the claimant's unemployment during the qualifying period for the 18th quarter was not a direct result of her impairment from the compensable injury; and that the self-insured did not waive the right to dispute the claimant's entitlement to SIBs for the 18th quarter. The claimant responded, urging affirmance.

DECISION

Reversed and rendered in part and affirmed as reformed in part.

It was undisputed that the claimant sustained a compensable injury on (date of injury), which resulted in an impairment rating exceeding 15%. The evidence reflects that the claimant filed an Application for [SIBs] (DWC-52) for the 18th quarter with the self-insured on October 14, 2016. Pursuant to Rule 130.108(c), the self-insured filed with the Texas Department of Insurance, Division of Workers' Compensation (Division) its Request to Schedule, Reschedule, or cancel a Benefit Review Conference (BRC) (DWC-45) requesting a BRC to dispute the claimant's entitlement to the 18th quarter of SIBs on October 24, 2016, a date within 10 days after the self-insured's receipt of the claimant's DWC-52. On October 25, 2016, the Division denied the self-insured's request for a BRC for the reason that the claimant's address listed in the DWC-45 was her former and not the current address to which she had recently moved.

In a decision following a previous CCH conducted on January 2, 2017, in Docket No. AC-11-155208-23-CC-HD42,¹ the hearing officer found that the Division acted in

¹ In the Discussion section of her decision, the hearing officer mistakenly identifies the case as Docket No. AC-11-155208-22-CC-HD42.

accordance with Section 410.023 and Rule 141.1 in denying the self-insured's DWC-45 filed on October 24, 2016, disputing the claimant's entitlement to SIBs. Based upon the decision in AC-11-155208-23-CC-HD42, the hearing officer found in this case that the self-insured did not request a BRC in accordance with Rule 141.1 within 10 days after the self-insured's receipt of the claimant's DWC-52. The hearing officer determined that, pursuant to Rule 141.1(f)(1), the self-insured's DWC-45 did not constitute a dispute proceeding and, for such reason, it waived its right to contest the claimant's entitlement to SIBs for the 18th quarter. In Appeals Panel Decision (APD) 170230 decided March 20, 2017, the Appeals Panel held that the self-insured properly disputed the claimant's entitlement to SIBs for the 18th quarter by filing a DWC-45 meeting the requirements of Rule 141.1; reversed the hearing officer's decision that the Division acted in accordance with Section 410.023 and Rule 141.1 in denying self-insured's DWC-45 on the issue; and rendered a new decision that the Division did not act in accordance with Section 410.023 and Rule 141.1 in denying self-insured's DWC-45 disputing the claimant's entitlement to SIBs for the 18th quarter on October 25, 2016.

In Finding of Fact No. 8, the hearing officer stated:

8. [The] [self-insured] filed two DWC-45 requests for [BRC] disputing [the] [c]laimant's entitlement to [SIBs]: on October 21, 2016, and October 27, 2014.

In fact, the self-insured's DWC-45s were filed with the Division on October 24, 2016, and October 27, 2016. Accordingly, we reform Finding of Fact No. 8 to conform to the evidence as follows:

8. The self-insured filed two DWC-45 requests for [BRC] disputing the claimant's entitlement to [SIBs]: on October 24, 2016, and October 27, 2016.

In Finding of Fact No. 9 the hearing officer stated:

9. The DWC-45 request filed on October 21, 2016, was denied by the Division; the DWC-45 request filed on October 24, 2016, was approved by the Division.

We reform Finding of Fact No. 9 to conform to the evidence as follows:

9. The DWC-45 request filed on October 24, 2016, was denied by the Division; the DWC-45 request filed on October 27, 2016, was approved by the Division.

The hearing officer based her decision that the self-insured waived its right to dispute the claimant's entitlement to SIBs for the 18th quarter on the fact that the self-insured listed an incorrect address for the claimant in its DWC-45 and that the Division properly denied the request. As mentioned above; however, we determined in APD 170230, *supra* that the self-insured complied with the requirements of Rule 141.1 and reversed the hearing officer's decision that the Division acted in accordance with Section 410.023 and Rule 141.1 in denying the self-insured's DWC-45 on the issue of

SIBs on October 25, 2016. Having determined that the self-insured filed a dispute of the claimant's entitlement to SIBs for the 18th quarter within 10 days after receiving the claimant's DWC-52 as provided by Rule 130.108(c) by requesting a BRC and that the self-insured's DWC-45 met the requirements of Rule 141.1, we rendered a new decision that the Division did not act in accordance with Section 410.023 and Rule 141.1 in denying the self-insured's DWC-45 disputing the claimant's entitlement to SIBs for the 18th quarter on October 25, 2016. We accordingly reverse the hearing officer's decision in this case that the self-insured waived its right to contest SIBs eligibility for the 18th quarter under Rule 130.108(c) and render a new decision that the self-insured did not waive its right to contest SIBs entitlement for the 18th quarter under Rule 130.108(c).

In Finding of Fact No. 6, the hearing officer stated:

6. During the qualifying period for the 18th quarter of [SIBs]:
 - A. [The] [c]laimant had some ability to work;
 - B. [The] [c]laimant did demonstrate an active effort to obtain employment each week during the qualifying period;
 - C. [The] [c]laimant's unemployment was a direct result of her impairment from the compensable injury.

The hearing officer's determinations in Finding of Fact No. 6 are supported by sufficient evidence; however, we note that the Decision and Order contains no conclusion of law or decision concerning the claimant's entitlement to SIBs for the 18th quarter based upon an active effort to obtain employment pursuant to Rule 130.102. Given that the evidence supports the hearing officer's Finding of Fact No. 6, we reform the hearing officer's decision that the claimant is entitled to SIBs for the 18th quarter to read as follows:

The claimant is entitled to SIBs for the 18th quarter, October 26, 2016, through January 24, 2017.

SUMMARY

We reform Finding of Fact No. 8 of the Decision and Order to conform to the evidence as follows:

The self-insured filed two DWC-45 requests for [BRC] disputing the claimant's entitlement to SIBs: on October 24, 2016, and October 27, 2016.

We reform Finding of Fact No. 9 of the Decision and Order to conform to the evidence as follows:

The DWC-45 request filed on October 24, 2016, was denied by the Division; the DWC-45 request filed on October 27, 2016, was approved by the Division.

We reverse the hearing officer's decision that [the self-insured] waived its right to contest SIBs eligibility for the 18th quarter under [Rule 130.108(c)] and render a new decision that the self-insured did not waive its right to dispute entitlement to SIBs for the 18th quarter under Rule 130.108(c).

We reform the hearing officer's decision that [the] claimant is entitled to [SIBs] for the 18th quarter, October 26, 2016, through January 24, 2017, because [the self-insured] waived the right to contest [the] [c]laimant's entitlement to [SIBs] for the 18th quarter and render a new decision that the claimant is entitled to SIBs for the 18th quarter, October 26, 2016, through January 24, 2017

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**STEPHEN S. VOLLBRECHT, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**STEPHEN S. VOLLBRECHT, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge